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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 CHARLES O'CAIN,

09 Plaintiff,

10 v.

11 STEPHANIE MURRAY, *et al.*,

12 Defendants.

Case No. C05-2124-JCC-MAT

REPORT AND RECOMMENDATION

13
14 INTRODUCTION AND SUMMARY CONCLUSION

15 This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff Charles O'Cain is
16 a state prisoner who is currently confined at the Stafford Creek Corrections Center in Aberdeen,
17 Washington. He seeks damages in this action for alleged violations of his constitutional rights
18 arising out of his pretrial detention at the King County Regional Justice Center ("RJC") in
19 2005. Plaintiff identifies RJC Classification Officer Stephanie Murray and King County as the
20 defendants in this action. Defendants now move for summary judgment.

21 Plaintiff has been advised of the summary judgment requirements pursuant to *Rand v.*
22 *Rowland*, 154 F.3d 952 (9th Cir. 1998), but has filed no response to defendants' motion. The

01 Court, having reviewed the pending motion for summary judgment, and the balance of the
02 record, concludes that defendants' motion for summary judgment should be granted and
03 plaintiff's complaint, and this action, should be dismissed with prejudice.

04 BACKGROUND

05 On August 13, 2004, plaintiff was charged in King County Superior Court with one
06 count of rape in the second degree. (Dkt. 56, Ex. A.) The state filed an amended information
07 on January 4, 2005 charging plaintiff with one count of rape in the first degree and one count of
08 attempted rape in the first degree. (*Id.*, Ex. B.)

09 In April 2005, corrections staff at the King County Department of Adult and Juvenile
10 Detention ("DAJD") began investigating plaintiff's use of jail telephones to commit additional
11 crimes including criminal impersonation, extortion, and phone harassment. (*See id.*, Ex. F,
12 Certification for Determination of Probable Cause.) On April 28, 2005, plaintiff's phone
13 privileges at the RJC were revoked by order of the King County Superior Court. (*Id.*, Ex. F,
14 Order on Criminal Motion, 4/28/05.) The order restricted plaintiff's telephone access to one
15 30 minute conversation with his attorney per week, a call which was to be supervised and
16 approved by jail classification staff. (*See id.*) Plaintiff apparently made his attorney calls
17 from defendant Murray's office, and in her presence, on several occasions. (*See* Dkt. 55 at 2.)

18 On September 8, 2005, plaintiff moved in his pending criminal action to modify the
19 previously imposed telephone restrictions. (Dkt. 56, Ex. F, Order on Criminal Motion,
20 9/8/05.) The King County Superior Court modified the restrictions to permit plaintiff one hour
21 of telephone access to his attorney per week. (*Id.*) The court's order provided that plaintiff's
22 attorney calls were to be unmonitored, though members of the corrections staff were permitted

01 to determine at the beginning and end of each call that plaintiff had contacted his attorney.
02 (Dkt. 56, Ex. F, Order on Criminal Motion, 9/8/05.)

03 In April 2006, plaintiff moved in his criminal action to remove the telephone deadlock
04 completely. (*Id.*, Order on Criminal Motion, 4/21/06.) The King County Superior Court
05 denied the motion based on evidence that plaintiff had committed crimes while in jail. (*Id.*)
06 the court noted in its order that it would not micromanage jail operations. (*Id.*) The court
07 further noted that, per the jail's concession, plaintiff would be permitted to use his thirty minute
08 weekly phone periods to have unrestricted use of the phone. (*Id.*)

09 Plaintiff filed this action in late December 2005 while he was awaiting trial in King
10 County Superior Court. (*See* Dkt. 1.) In January 2007, defendants moved to stay this action
11 pending full resolution of plaintiff's criminal proceedings. (Dkt. 36.) Plaintiff did not oppose
12 the motion and, in March 2007, the undersigned granted the requested stay. (Dkt. 39.)
13 Plaintiff's criminal trial commenced in February 2007. (*See* Dkt. 56, Ex. D.) At the time of
14 trial, the state was permitted to amend the charges again, adding a count of assault in the second
15 degree to the pending rape in the first degree and attempted rape in the first degree charges.
16 (*Id.*, Exs. C and D.)

17 On the first day of trial, plaintiff filed a motion to dismiss the charges against him based
18 on governmental misconduct. (*Id.*, Ex. E.) Among plaintiff's complaints were that his cell
19 had been searched without a warrant and his legal materials had been reviewed by jail staff, that
20 his telephone contact with his attorney was unduly limited and his calls were unlawfully
21 monitored, and that his telephone calls had been unlawfully recorded. (*Id.*) The trial court
22 held a hearing on plaintiff's motion to dismiss and, after taking evidence and hearing argument,

01 the trial court denied the motion to dismiss. (Dkt. 56, Ex. G.)

02 On March 16, 2007, plaintiff was found guilty on one count of rape in the second degree
03 and he was sentenced on May 7, 2007 to a minimum term of 280 months confinement. (*Id.*,
04 Ex. H.) Plaintiff appealed his judgment and sentence to the Washington Court of Appeals and
05 on May 27, 2008, the Court of Appeals issued an opinion affirming plaintiff's conviction, but
06 remanding the case to the trial court to strike one of the conditions of community custody
07 imposed by the trial court which the Court of Appeals deemed improper. (*See id.*, Ex. I.).
08 The Court of Appeals issued its mandate terminating direct review on July 25, 2008. (*See id.*)

09 In March 2013, plaintiff moved to lift the stay in this action. (Dkt. 48.) Defendants
10 did not oppose the motion and, the stay was lifted in May 2013. (Dkt. 53.) Shortly after the
11 stay was lifted, defendants file the motion for summary judgment which is now pending and
12 ripe for review. (Dkt. 55.)

13 DISCUSSION

14 Plaintiff alleges in his civil rights complaint that defendant Stephanie Murray, a
15 Corrections Program Specialist at the RJC, interfered with private phone calls between plaintiff
16 and his attorney in his criminal case which was pending at the time plaintiff filed this action.
17 (Dkt. 6 at 3.) Plaintiff further alleges that the King County Jail has a custom and policy of
18 supervising all attorney calls for inmates on phone deadlock and that deadlock inmates
19 therefore had no private call privileges with their attorneys. (*Id.*) Plaintiff asserts that
20 defendants' violated his First Amendment right to freedom of speech, his Fourth Amendment
21 right to privacy, his Sixth Amendment right to counsel, and his Fourteenth Amendment right to
22 due process. (*Id.*)

01 Defendants argue in their summary judgment motion that plaintiff's claims are barred
02 under *Heck v. Humphrey*, 512 U.S. 477 (1994). Defendants also argue that plaintiff is
03 collaterally stopped from litigating his constitutional claims in this action because his claims
04 were resolved in his criminal proceedings. This Court deems it necessary only to address the
05 second of defendants' arguments.

06 Summary Judgment Standard

07 Summary judgment is proper only where "the pleadings, depositions, answers to
08 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
09 genuine issue as to any material fact and that the moving party is entitled to judgment as a
10 matter of law." Fed.R.Civ.P. 56(c). The moving party has the burden of demonstrating the
11 absence of a genuine issue of material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
12 242, 257 (1986). In response to a properly supported summary judgment motion, the
13 nonmoving party may not rest upon mere allegations or denials in the pleadings, but must set
14 forth specific facts demonstrating a genuine issue of fact for trial and produce evidence
15 sufficient to establish the existence of the elements essential to his case. *See* Fed. R. Civ. P.
16 56(e).

17 Collateral Estoppel

18 Defendants argue that plaintiff is precluded from litigating his constitutional claims in
19 this § 1983 action because the claims were previously resolved in his state court criminal
20 proceedings. It is well settled that "a federal court must give to a state-court judgment the
21 same preclusive effect as would be given that judgment under the law of the State in which the
22 judgment was rendered." *Migra v. Warren City School Dist. Bd. Of Ed.*, 465 U.S. 75, 81. *See*

01 also, *Allen v. McCurry*, 449 U.S. 90 (1980); *Kremer v. Chemical Construction Corp.*, 456 U.S.
02 461 (1982); *Haring v. Prosise*, 462 U.S. 306 (1983)). In *Allen*, the Supreme Court specifically
03 held that § 1983 does not open the way for a litigant to re-litigate an issue that was previously
04 decided in a state criminal proceeding.

05 The evidence submitted by defendants in support of their motion for summary judgment
06 makes clear that plaintiff litigated his Fourth, Sixth, and Fourteenth Amendment claims relating
07 to the telephone procedures at the RJC and defendants' alleged interference with his right to
08 counsel in the motion to dismiss he filed in his state court criminal proceedings.¹ (*See* Dkt. 56,
09 Ex. E.) Plaintiff did not allege in his motion to dismiss any violation of his First Amendment
10 rights but, as defendants correctly point out, plaintiff has failed to state any cognizable First
11 Amendment claim in these proceedings and, in any event, the claim appears to be based upon
12 the same factual allegations asserted and resolved in plaintiff's criminal proceedings. This
13 Court therefore concludes that plaintiff is precluded from pursuing any of his constitutional
14 claims in this civil rights action.

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22 ¹ The Court notes that plaintiff himself drafted the motion to dismiss in his state court proceedings and
his attorney adopted the motion and presented it in conjunction with defendants' trial memorandum. (*See* Dkt.
56, Ex. E.)

CONCLUSION

Based on the foregoing, this Court recommends that defendants' motion for summary judgment be granted and plaintiff's complaint and this action be dismissed with prejudice. A proposed order accompanies this Report and Recommendation.

DATED this 20th day of November, 2013.



Mary Alice Theiler
Chief United States Magistrate Judge